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AN INDEPENDENT JOURNAL,

DEVOTED TO HAWAHAN PROGRESS. Supreme Court of the Hawaiian

KAAIMANU M. KAUWA AND KOA. IN EQUITY, ON APPEAL-HARRIS AND JUDD, J. J. Mr. Justice Jupp delivered the opinion

The bill filed July 15th, 1874, alleges that the plaintiff is lawfully seized and pos sessed of a piece of land in Koolauloa, Oahu, described in Award of the Land Commis-

The plaintiff alleges that be inherited this estate from one Koo, his father, who died father's decease, the plaintiff entered upon the land and has continued ever since in open, notorious, peaceable, uninterrupted, sion and occupancy, taking to his own use the rents and profits, up to the 5th of Jannary, 1874, on which day Kanwa, one of the defendants, entered upon a portion of the land which had been prepared by the plaintiff for the cultivation of rice, and planted it with kalo, which kalo the plaintiff immediately removed; whereupon Kauwa sued the plaintiff in the District Court for trespass, and the Magistrate gave judgment in

favor of the plaintiff.

The bill alleges that Koo derived his title as follows: Koo was the original occupier of the land; that in 1845, he orally gave his sister Kaluahine, Mauwele's wife, a life interest in this land; that in 1848 Kaluahine died, and her husband Mauwele surrendered the land again to Koo, and himself died in 1848; in 1851, plaintiff, by diection of his father Koo, pointed out the boundaries of the land to Turner, the government surveyor; that in 1853, plaintiff, by direction of his father, went to the Land Commission and took out the Award No. 3717, and paid the fee of six dollars; that said Award was issued in the name of Mauwele y mistake of the party issuing it, and that it has remained in his possession ever since; that said Kauwa, who claims to be the heir of Mauwele, has made a deed of said land to Koa, one of the defendants; that as one suit has been brought in regard to this matter and more are threatened by the defendant Koa to obtain possession of the land, and as the Award to Manwele remains as a cloud upon the plaintiffs' title to this land, he prays that the deed of Kauwa to Koa may be delivered up to be cancelled and that defendants may be enjoined against bringing any suits at law for the possession of the land in question.

The answer, in brief, asserts that the ossession is interrupted because that one Nika lived on the land after Koo's death, by Kauwa's consent; that in 1866 there was a proposition made between plaintiff and Kauwa to exchange the land for a land of plaintiffs' mother-in-law, and, on this, the plaintiff lived on the land; that Mauwele applied for the Award and died in 1851, and that the alleged deed from Kauwa to Koa is only a mortgage, The allegation in the bill that Award

No. 3717 was issued to Mauwele by mistake, is not insisted on in this appeal, The plaintiffs' alleged title is by prescrip-

The defendant's alleged title is inheritance from Manwele, to whom the land was awarded, and the Court is asked by the plaintiff to adjudge his possession to have been notorious, exclusive, peaceable and adverse for twenty years, and therefore a perfeet title, and to enjoin the defendant from asserting his title against this. The jurisdiction of Courts of Equity

grant injunctions of this character, "is the right time and in the right has never made a mistake." founded upon the equity of relieving a man from the necessity of bringing action after believe this to be his first visit to a foreign Smudge. action at law for every violation of a common law right, and of finally quieting the right, after a case has received such full decision as entitles a man to be protected against further trials of the right." Kerr's Injunc., p. 225. But before the injunction can be granted the legal right must be established.

The jurisdiction in respect to titles of real estate is in courts of common law. which courts of equity should hesitate to invade; especially so in the case at bar, where the plaintiff's title is alleged to be by prescription and this is traversed by the nswer, and therefore the decision of the case depends upon facts and questions peculiarly suitable for trials at law, where parties can have a jury of the country to pass upon the facts. A title by prescription, if well proven, is

a good defense at law, and statutes of limitation are enacted to make certain the length of time of possession which constitutes such a title.

The statute of limitations relied upon by the plaintiff's counsel (Acts of 1870, p. 28,) is entitled "An Act limiting the time within which actions may be brought to recover to the effect that overtures have been made by the Mexican government to that of the United States to cede all the territory of the former lying north of a line of latitude. in his Real Property, 2 vol., p. 449, "The statute of limitations in respect to lands, operates as the extinguishment of the one, though not as a grift of the estate to the Grande to the Pacific Ocean, and that the though not as a gift of the estate to the

twenty years, but it does not make a gift of the estate to the plaintiff.

The text-writers treat "prescription" as to base a cause of action in equity.

Story in his Equity Jurisprudence, \$894, states the doctrine thus: "A defense cannot be set up as the ground for a bill in equity for an injunction, which has been fully and fairly tried at law, although it may be the opinion of the Court that the defense ought to have been sustained at law."

If, however, the plaintiff in this case had successfully established this defense in a defendant for the possession of the land, probable that the postponement of final dehe would have then some ground for asking this Court to enjoin the defendant against bringing further like suits. But it is not certain if one suit would be sufficient as the attitude of the United States Govern-

the question should depend in all cases upon the fact whether the conscience of the and not on the number of trials which may have taken place."

In the case before us, however, the only suit which has been had between the parties was the suit in trespass before the be found the inducements which have ac magistrate, the gist of which is injury to the possession, and where the title to the real estate could not be determined. The decision of the case at bar requires

adjudication at law.

In Great Britain it required a statute (25 and 26 Victoria, c. 42) to authorize courts of chancery to pass upon questions of law and fact, on the determination of

which title to relief or remedy in equity

In the absence of any such statute in

Bill dismissed with costs.

CHAS. C. HARRIS, A. FRANCIS JUDD.

A. S. Hartwell for plaintiff. J. K. Unanna for defendants.

A Well-Merited Compliment.

In the March number of the Friend, we find a letter, understood to be from the in the year 1853; that immediately on his highest compliment which has yet been reminding Smudge that they had named their paid to King Kalakaua, when it says that first child Alpha. in all his intercourse with the public, in his tour through America, "King Kalakana has always said and done the right thingat the right time and in the right place."

Rec, S. C. Damon, Honolulu-My DEAR SIR-Never has a President of the United States met with more brilliant receptions than have been accorded to King Kalakaua during his journey from Omaha through the principal cities to Boston.

In one respet, Kalakana's triumph surpasses that of any of his predecessors. All political parties and all classes of men have vied with each other to pay him suitable

A becoming kingly dignity without pride, pretense, or ostentation, has gained him miversal admiration; whilst his modest, frank and cordial bearing has won all hearts wherever and whenever he has allowed him. self to be presented to the public-more especially the hearts of ladies-due no doubt to the King's gallantry-as at a a large gathering of members of the Hawaiian Club and others, at a reception given by Wm. F. Brigham,, Esq., of Boston, where the King saw more of the sex than at any previous would be pleased to talk with ladies. No patrons of the American Board at a receptive baby Roger W. Goliah Smudge." tion, on the same day of his arrival in this city, at the house of Hon. Alpheus Hardy, where His Majesty, in the fullest, sincerest and most gracious manner, recognized his obligations to the American Board, through whose instrumentality his people had become a Christian and civilized nation. But that you may not think that our love of Hawaii has lent the color of the rose to my state-ments, I give you the impression the King's Garibaldi, for instance." visit has made upon a disinterested elderly gentleman-a friend of mine-and who, though he has never seen the King or taken special interest in Hawaiian Affairs, is a very close and accurate observer of men, as he has been of the reported conversations and impromptu addresses of the King on divers occasions to private and public bodies of men. Referring to such interviews, my friend

(and I never knew him to do or say a false thing) remarked, "He has never made a mame," said Mrs mistake. He has everywhere sowed pure great, good name." wheat and no tares"-and he continued in has been presented or called upon for a re- self. cognition of the homage sought to be paid to him, whether by Ecclesiastical, Educational, Railroad, or Manufacturing Corporations; whether by Governors and Counsels, Mayors and Aldermen, or the multitudes that have greeted and cheered him at every railroad station, King Kalakaua has

always said and done the right thing-at country; and I have sometimes cast an eye behind him to see if I could discover advisers and prompters, but I have never discovered any. His own good sense and tact, I presume, have been his only advisers and npters; and these appear never to have

forsaken him. King Kalakaua's visit appears to have put the people and the prees in good humor towards himself and people, so that the disapprobation of constituents is less to be red now by members of Congress in the matter of the Treaty than at any former period; but should the treaty fail the King's visit will not be lost, for it has raised him self and his people in the estimation of his friends, and at the same time disabused the minds of those who remember the Sandwich Islands only as they were in the days of Captain Cook.

Annexation of Mexican States,

The San Francisco Commercial Herald

publishes the following: Very important information has reached to the effect that overtures have been made matter will engross the attention of Con-The operation of this statute would be gress at its next session, with the greatest to extinguish the remedy of the defendant in obtaining possession of the land in question, unless he brought his action within that the point has not yet been settled. One thing is positive, a number of our heaviest capitalists and bold operators have a plea or defense, not as a title upon which to base a cause of action in equity.

very recently been actively in pursuit of mines lying in the territory to be ceded. Several in Lower California have already changed hands, and mining engineers have been dispatched to Sonora and Chihunhua. It is evident to us that much commotion exists about this matter in certain circles, and that there is good foundation for the report. By this arrangement the United States will acquire Nueva Leon, Coahuila, Chihuahna, Sonora, Lower California, and court of law to an action brought by the portions of Sinaloa and Durango. It is cision by the Mexican and American Joint Commissions was based upon this consideration, and it is not unlikely that the Mexican Government may have been influenced by Kerr on Injunctions, p. 134, says that ment in reference to Mexican inroads upon our territory. Mexico has need of money, the States named are distant from the court is satisfied as to the result of the trial capital, and there are no railroads or other even moderate means of connection; they cannot be controlled by their Pederal au thorities, and are almost constantly in an uproar. In these and similar reasons may tuated the Mexican Government.

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Naming the Baby.

Smudge had ransacked various books for a name, this country, we feel obliged to decline ju- and as the sixth of the latest edition of Smodge was indicative of toil in the ranks of men, as the Having arrived at this conclusion it is infant looked strong-almost warlike-a great ot necessary to examine and pass upon the name was the quest of its distracted parents. Mrs. proofs offered as to the plaintiff's title by S. wanted it named after some Bible character. Smudge suggested Samson Golish which would typify strength; Mrs. S. leaned to Moses Samuel, natical of wonkness.

Sinnige had declared that he would expose the child to the measles before it should be nicknamed Moss or Sam. Then he hinted at Jonah; but Mrs. S. would listen to no such monogram. She didn't want her last child's name connected with the fish story! Already they had named a child Haman, and she was sure that he would be pen of Dr. R. W. Wood, now of Boston, hanged some day. Seeing that no scriptural but formerly of this city. It contains the name could be agreed apon, she suggested Omega,

"You don't call this one Omega," said Smudge, "I'll put the name away, and when we want it I'll let you know. How would Martin Lather do?"

"I'm a Baptist, I am, Smudge I" retorted Mrs. S., coloring. I don't want any Lutheran names in this house. For your mother's sake I allowed one of my children to be called Jonathan Wesley. She don't poke any Methodist names on me again If Luther had been a Baptist the name might do. There's Roger Williams. Roger Williams Smudge would sound well. He could write it R. Williams Smudge, you see."

"But he never will," cried the parent with demination. "Roger Williams was a Baptist, and you know, Mrs. Smudge, that I don't lean that way. I'd sooner call him Tom Paine."

" Call him Tom Paine, and I'll kill him before he's weaned." "You like Paritans, Mrs. Smudge. Call him

Miles Standish." "No, sir! I don't want my child to grow up with any such outlandrsh name. You called our second boy Plymouth Rock Smudge, and that name will kill him before he votes. No more Puritan names."

"You're the confeandest particular woman I reception-he was heard to remark that he ever saw," retorted Smudge. "If it had been a was tired of talking with gentlemen, but girl we would have called her Cleopatra Octavia." "No we wouldn't! Our fourth girl now grouns corporation or body of men have appeared under the name of Olympia Tarpeia. It will make ore gratified with the cordial greeting given her an old maid. You like a strong name-tiothem by the King, than the officers and linh for instance-I, a Baptist one. Let's call

> " Put the Bible name first." "I won't do it !"

"Then we'll call him something else." "My father's name was Joshua Gideon," meekly suggested Mrs. S.

"What do I care if it was? None of my children shall be called after any of your relatives.

"Or Bonaparte." "Which one?"

"No; I won't have him called Napoleon," retorted Mrs. S. firmly. "Smudge, you're the worst individual I ever lived with. You won't listen to anything I propose." "Then call the boy Daniel Webster. I always

admired the old statesman." "Our family shau't be disgraced by a whig name," suid Mrs. Smudge. "Lafayette is a

Smudge thought; he was on the eve of angsubstance: "Whenever and wherever he gesting the name of the great Frenchman him-

" He must have a middle name."

" Lafayette Williams," suid Mrs. S. "There's your old Baptist name again! I tell you Roger Williams shan't in any form hang to Cases Ginghams,
Cases Pink Page.

"Then you shan't call him Lafavette." And thus the quarreling over the christening continued for six mortal hours. Finally the afffair was settled. Smudge's twelfth baby is to I have myself felt surprised at this, as I the face world with the simple cognomen of John

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